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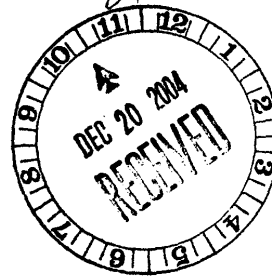
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BY HAND

December 17, 2004

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street  
Washington, D.C. 20423-0001

**FILED**

DEC 20 2004

**RE:** FD No. 34633, Wisconsin & Southern  
Railroad Co. - Acquisition Exemption  
Union Pacific Railroad Company

TRANSPORTATION BOARD

Dear Mr. Williams:

On behalf of Petitioner Wisconsin & Southern Railroad Co. ("WSOR") I am filing an original and ten copies of a petition for exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10902 for the acquisition by WSOR of a line of railroad of the Union Pacific Railroad Company.

I am also enclosing one check payable to the Board for \$5,300 to cover the applicable filing fee and a computer disk formatted in Word Perfect containing this filing.

Please date stamp and return one copy of this filing.

Sincerely yours,

John D. Heffner

Enclosures

cc: David Konschnik, Esq.  
Mack Shumate, Esq.  
Mr. William Gardner  
Mr. Tim Karp

2004

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ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD



212800

STB Finance Docket No. 34633

ORIGINAL

WISCONSIN & SOUTHERN RAILROAD CO.  
-- ACQUISITION EXEMPTION --  
UNION PACIFIC RAILROAD COMPANY

PETITION FOR EXEMPTION  
UNDER 49 U.S.C. 10502

EXPEDITED CONSIDERATION REQUESTED

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Counsel for Petitioner  
Wisconsin & Southern  
Railroad Co.

Dated: December 17, 2004

Sheboygan Cutoff. The subject trackage to be purchased consists of the contiguous western part of the line from milepost 8.0 to the end of the main line track in Plymouth, WI, at Engineering Station 1481+00, milepost 14.95.<sup>2</sup> WSOR submits as Exhibit 1 a map depicting the location of the subject trackage and its connections, and as Exhibit 2 a map depicting the entire WSOR system. WSOR requests expedited handling for this Petition with a decision served on or before February 5, 2005, effective on the date of service.

## II.

### FACTUAL BACKGROUND

Petitioner is an existing class II railroad common carrier operating over 600 miles of trackage in Wisconsin and adjacent northern Illinois. Originally established in 1980 to operate segments of the former Milwaukee Road that were being abandoned and subsequently acquired by the State of Wisconsin, WSOR has grown substantially over the past 23 and ½ years. Starting as a class III short line rail carrier operating 93 miles of track, WSOR eventually took over several former CP Rail and Union Pacific lines radiating out of Madison, WI, as well as former CP Rail trackage in Milwaukee. In 1992, WSOR's owner and President William Gardner acquired control of another class III Wisconsin-

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<sup>2</sup> Where it connects a north-south line (the Plymouth Line) currently owned by Wisconsin Central LTD (WCL) that will be acquired by the State of Wisconsin Department of Transportation for operation by WSOR. This transaction is described in more detail in footnote 4 on page 4, infra.

based short line railroad, the Wisconsin & Calumet Railroad (WICT). In 1996, WSOR merged WICT's operations and properties into WSOR, leaving WSOR as the surviving company.<sup>3</sup> WSOR also acquired trackage rights from other railroads for the purpose of connecting all of these lines. Early in 2003, WSOR's revenues increased to the point where it became a small class II railroad.

WSOR wants to acquire the subject line as part of a larger project to acquire trackage north of Milwaukee, WI, and tie such trackage in with the rest of WSOR's system in order to provide improved rail service to shippers in that region.<sup>4</sup> The condition of the Line is currently below UP's standards and UP's traffic projections do not warrant the expenditure of funds necessary to rehabilitate it. Unlike UP, WSOR has access to state funding. This additional funding will enable WSOR to rehabilitate the Line. In addition, because WSOR is a smaller, locally based carrier, it can provide more frequent and customer-centered

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<sup>3</sup> See, STB FD No. 33450, Wisconsin & Southern Railroad Co.-Corporate Family Transaction Exemption-Wisconsin and Calumet Railroad Company (served September 5, 1997).

<sup>4</sup> The Board recently granted WSOR operating authority over the nearby Plymouth Line of Wisconsin Central Ltd. (WCL) in Wisconsin Central Ltd.-Abandonment-In Ozaukee, Sheboygan and Manitowoc Counties, WI, STB Docket No. AB-303 (Sub-No. 27) (STB served Dec. 3, 2004). The Plymouth Line extends from milepost 114.8 near Saukville to milepost 151.8 near Kiel in Ozaukee, Sheboygan and Manitowoc Counties, WI. WSOR has also filed an exemption for overhead trackage rights between Saukville and North Milwaukee, WI, to connect this trackage to the rest of its system. See STB FD. No. 34621, Wisconsin & Southern Railroad Co. - Trackage Rights Exemption - Wisconsin Central Ltd.

service on the Line on an economically justified basis. WSOR believes that its improved service will attract potential customers to The line who have previously found it more economical to utilize other forms of transportation than rail. The addition of rail as an attractive means of transportation in this area will greatly help to stimulate the local economy, which, while currently depressed, has the infrastructure and population to work toward recovery.

### III.

#### ADDITIONAL INFORMATION

So that the Board may expeditiously process its request, WSOR provides the following additional information about the transaction:

- (1) The full name and address of the Petitioner is Wisconsin & Southern Railroad Co., 5300 N. 33<sup>rd</sup> Street, P.O. Box 90229, Milwaukee, WI 53209-0229.
- (2) The name, address, and telephone number of the representative of the Petitioner who should receive correspondence is John D. Heffner, John D. Heffner, PLLC, 1920 N Street, N.W., Suite 800, Washington, D.C. 20036. Phone is 202-263-4180.
- (3) The name and address of the railroad transferring the rail line is Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179.

(4) The parties propose to consummate this transaction as soon as possible, hopefully on or about February 5, 2005.<sup>1</sup>

(5) The subject trackage to be leased consists of the Kohler Industrial Lead, extending from milepost 8.0 near Kohler, WI, to milepost 1.2 at Sheboygan, WI, the lead to the former Cargill Malting Plant at 704 S. 15<sup>th</sup> Street, and the connecting track to UP's Sheboygan Cutoff. The subject trackage to be purchased consists of the line from milepost 8.0 near Kohler, WI, to the west end of the main line track in Plymouth, WI at Engineering Station 1481+00, milepost 14.95.

(6) Maps indicating the lines being leased and acquired and the WSOR system track are attached hereto as Exhibits 1 and 2.

(7) After the transaction is consummated, WSOR will continue to be a class II carrier.

#### IV.

##### ARGUMENT

##### THE ACQUISITION OF THE SUBJECT

##### TRackage SHOULD BE EXEMPTED

Petitioner seeks an exemption under 49 U.S.C. 10502 from 49 U.S.C. 10902 to permit it to lease and purchase approximately 14

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<sup>1</sup> Labor notice, as required under 49 CFR 1121.4(h), was posted by UP on December 5, 2004 and served by WSOR on the affected unions on December 3, 2004. WSOR certified this information to the Board on December 8, 2004.

miles of trackage. But for the exemption of 49 U.S.C. 10502, WSOR's acquisition would require the Board's authorization under 49 U.S.C. 10902 applicable to the acquisition (and also operation) of actively used railroad lines by existing class II and III rail carriers. Under §10902(c), the Board shall issue a certificate authorizing a class II carrier to acquire an additional line of railroad unless the Board finds that the acquisition is inconsistent with the public convenience and necessity.

Petitioner believes that its request is appropriate for exemption from the formal requirements of §10902. Section 10502 directs the Board to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the transportation policy of §10101(a) and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power. Indeed, the legislative history behind §10505 (the predecessor section to the current §10502) makes clear Congress' intent that the Interstate Commerce Commission (and now the Board) use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation.

In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

The policy underlying this provision is that

while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation--Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed transaction from §10902 is exactly the type of minor transaction Congress contemplated when it enacted §10502. Requiring WSOR to submit a formal application is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. A grant of the exemption will further several goals of the I.C.C. Termination Act including §10101a(2) and (7), minimizing federal control over transportation and reducing regulatory barriers to entry. A grant will also facilitate the goals of §10101a(5) and (9) providing for sound economic conditions in the transportation industry and honest and efficient management of railroads. WSOR's lease and purchase of this trackage from UP will permit a locally-based carrier with strong ties to Wisconsin to rehabilitate the Line, provide improved service over it, and collect local traffic which can then be funneled efficiently to



the UP and other class I carriers for longer haul distribution over the national railroad system.

Granting WSOR's request also satisfies both the limited scope and the no abuse of captive shippers tests of the § 10502 exemption provision. The total length of the track involved is approximately only 14 miles. WSOR's current system connects with each of the six largest Class I railroads, and WSOR operates via trackage rights into Chicago, where it also connects with the lines of both CSX Transportation, Inc. and Norfolk Southern Railway Company. Because WSOR operates as a neutral "feeder" railroad with multiple Class I connections. WSOR's rail service would increase the competitive options of the shippers on the Line. For these reasons, WSOR's acquisition of the Line will not result in an abuse of market power.

In 1996, the Board promulgated a class exemption entitling class III carriers to acquire and/or operate actively used rail lines without having to undergo the expense and burden of submitting either a formal application or an individual petition for exemption for operating authority. Class Exemp. For Acq. Or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996). Had WSOR still been a class III carrier at the time of this filing, it would have been entitled to avail itself of that class exemption. Due to the absence of such a class exemption for the acquisition of actively used lines by class II carriers, WSOR must file an individual petition for exemption. But the reasons for granting the exemption sought here are the same as those applicable to a grant of the class exemptions discussed above.

V.

EMPLOYEE PROTECTION; CERTIFICATION OF NOTICES

This acquisition will be subject to the employee severance conditions described in 49 U.S.C. 10902(d) as set forth in Wisconsin Central Ltd-Acquisition Exemption-Union Pacific Railroad, 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1988).

Under 49 CFR 1121.4(h) WSOR is required to post and serve a notice of intent at least 60 days before the exemption becomes effective. On December 8, 2004, WSOR served a letter on the Board certifying that it had complied with the notice and posting requirements of 49 CFR 1121.4(h).

VI.

ENVIRONMENTAL AND HISTORIC IMPACTS

UNDER 49 CFR 1105

Pursuant to 49 CFR 1105.6(c)(2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c)(2)(i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b)(1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will

continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

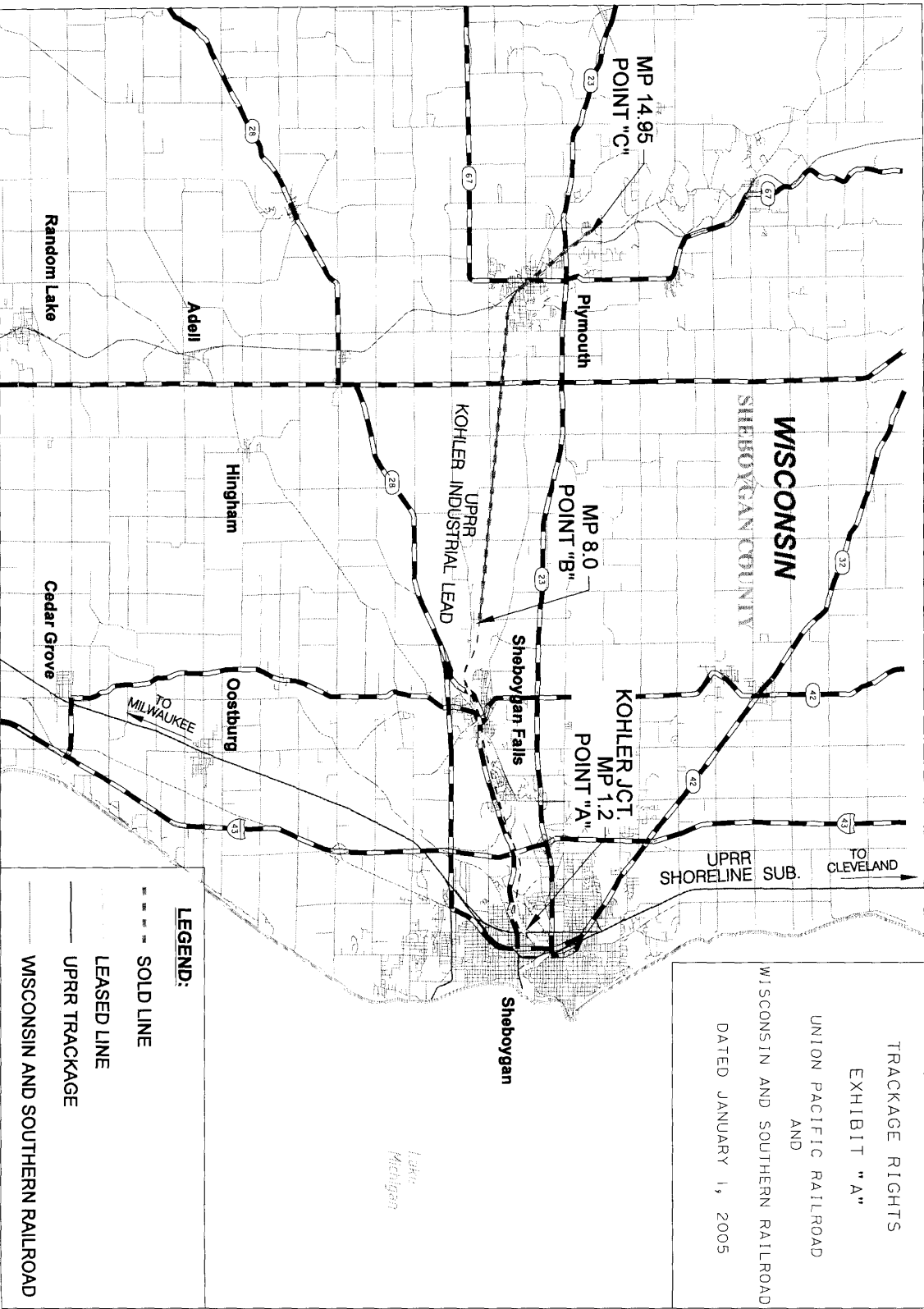
VII.

WSOR REQUESTS EXPEDITIOUS HANDLING

WSOR respectfully asks the Board to issue a decision granting this exemption on or before February 5, 2005, effective on the date of service. Expedited handling will allow WSOR to begin operating over the Line as soon as possible and thereby maximize the benefit of its newly acquired operating rights over the Plymouth Line, to which it connects. Expedited handling will also allow WSOR to begin serving an important new shipper that will come on line in early 2005 and will facilitate the commencement of badly needed track rehabilitation work in the Spring of 2005. Allowing WSOR to close this transaction shortly after consummation of the Plymouth Line transaction will improved the economics of this package of light density lines.

In Buffalo & Pittsburgh Railroad, Inc.-Acquisition and Operation Exemption-CSX Transportation, Inc., STB Finance Docket No. 34410 (STB served Nov. 19, 2003), a case also involving the purchase of a line the purchaser had operated in the past by lease, the Board granted the requested exemption a mere 26 days

**EXHIBIT A**



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**EXHIBIT B**



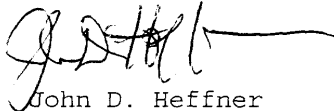
after filing, with an effective date 56 days after filing.  
Because WSOR needs to be able to close this transaction promptly, it requests the similar expedited relief.

VIII.

CONCLUSION

Accordingly, WSOR requests that the Board grant it an exemption from the provisions of 49 U.S.C. 10902 to permit it to acquire the subject rail line with a decision served on or before February 5, 2005, effective upon service.

Respectfully submitted,



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Dated: December 17, 2004